Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	WC Docket No. 01-338
	)	

COMMENTS OF THE

UTAH COMMITTEE OF CONSUMER SERVICES

October 4, 2004

EXECUTIVE SUMMARY

The Utah Committee of Consumer Services (Committee) represents residential, small commercial and agricultural consumers of natural gas, electric and telephone service before the Utah Public Service Commission (Utah PSC). The Committee participated in the Utah PSC's mass market "impairment" proceeding and is now participating in the Federal Communications Commission's (FCC or Commission) proceeding to establish unbundling rules in order to support the goal of expanding consumer choice in Utah and protecting those consumers who continue to lack competitive choice in telecommunications services. Of paramount importance in this proceeding is to establish network unbundling rules that conform to the Telecommunications Act of 1996, in both letter and spirit.

The Committee's comments offer specific recommendations regarding the FCC's network unbundling rules and their application to specific markets, and seek to ensure that the FCC's analysis of impairment adequately addresses the unique interests of consumers within properly defined, local markets. Evidence marshaled by the Committee in the Utah PSC's impairment proceeding demonstrates that mass market customers continue to depend on unbundled network element platforms (UNE-P) for competitive choice among local telecommunications providers and that competitive local exchange carriers' (CLEC) would be impaired without access to unbundled switching to serve residential and small business consumers.

The Committee's comments address the directives in *United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) (USTA II) pertaining to methods of assessing whether CLEC's service to mass market customers is impaired without access to an incumbent local exchange carrier's (ILEC) unbundled local switching. In particular, the Committee's comments address the proposed rules requirement for and consideration of the detailed granular data and evidence that the Committee deems necessary to accurately and fairly analyze impairment in local markets.

The Committee contends a precise definition of the relevant product, customer, and geographic market is essential to a proper impairment analysis. To determine whether impairment exists, the Committee supports the judicious use of the self-provisioning and competitive wholesale facilities triggers, but recommends that the FCC eliminate its potential deployment analysis from its final rules.

The Committee contends that the second six-month phase of the Commission's twelve-month transition plan should not be retained in final unbundling rules, as it is contrary to the ratemaking authority of the states and the rate increases contained in the transition period harm mass market consumers through both price increases and the potential for fewer competitive choices. Instead, the Commission should retain the transition plan it outlined in its *Triennial Review Order* and ensure that the incumbent local exchange carriers' hot cut processes are efficient and reasonably priced. If it is determined, at some future date, that CLECs are not impaired without access to unbundled local switching in specific markets in Utah, the transition from UNE-P should be as stable, efficient, and economical as possible for consumers, investors, and telecommunications carriers.

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COMMENTS OF THE UTAH COMMITTEE OF CONSUMER SERVICES

INTRODUCTION

The Utah Committee of Consumer Services (Committee) submits these comments in response to the *Order and Notice of Proposed Rulemaking* (*NPRM*) issued by the Federal Communication Commission (FCC) on August 20, 2004. The *NPRM* seeks comment on how to respond to the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*). The FCC seeks comments upon new proposed unbundling rules under sections 251(c) and

251(d)(2) of the Telecommunications Act of 1996 (1996 Act). The 1996 Act amended the Communications Act of 1934. The Committee's comments adopt and incorporate the Affidavit of Susan M. Baldwin, which is filed together with these comments. The data and information referred to by Ms. Baldwin that is confidential under the Protective Order in these proceedings, has been separately filed in confidential and public versions as required by the Protective Order.

The Committee is Utah's utility consumer advocate, representing residential, small commercial and agricultural consumers of natural gas, electric and telephone service before the Utah Public Service Commission (Utah PSC). The Committee supports the goal of the Utah PSC "to provide wider customer choices for telecommunications services throughout the state, and …to protect customers who do not have competitive choices." (*The State of the Telecommunications Industry in Utah*, Sixth Annual Report to the Governor, Legislature, the Public Utilities and Technology Interim Committee, and Utah Technology Commission, October 2003, at 3.)

The Committee participated in the Utah PSC's mass-market "impairment" proceeding (Utah PSC Docket No. 03-999-04) by conducting discovery into specific Utah markets, product, customer and geographic, occupied by the incumbent Qwest Corporation (Qwest) and competitive local exchange carriers

(CLEC). The evidence compiled by the Committee was not submitted to the Utah PSC because the Utah PSC suspended the proceedings as a result of the *USTA II* decision by the D.C. Circuit on March 2, 2004.

The Committee submits these comments in the instant proceeding to assist the FCC in the establishment of final network unbundling rules that promote competitive choice for residential and small business customers and that also protect mass market consumers where such choice does not yet exist. The Committee offers specific recommendations regarding the FCC's network unbundling rules and their application to specific markets, which are intended to ensure that the FCC's network unbundling framework and the FCC's analysis of whether impairment exists recognizes and addresses adequately consumers' unique interests.

The Committee's comments are intended to assist the FCC in responding to the specific directives that the D.C. Circuit set forth in *USTA II* and in assessing whether there are any areas of "non-impairment" for unbundled mass market switching in Utah's local markets. In particular, these comments and Ms. Baldwin's Affidavit identify specific aspects of the rules that merit clarification and/or modification in order to promote mass-market competition. The Committee's comments also demonstrate that an impairment analysis must be specific to local markets in order to conform to the letter and spirit of the 1996 Act.

Ms. Baldwin's analysis and recommendations are based, in part, on her in-depth examination of (1) public data; (2) granular local market data in Utah that carriers submitted in Utah PSC Docket No. 03-999-04; (3) Qwest's claim of non-impairment in five Qwest-proposed markets in which it asserts that either a "Track One" trigger or "Track Two" analysis is met; and (4) numerous data responses provided by Qwest and CLECs in Utah. The conclusions and recommendations in the attached Affidavit are further informed by Ms. Baldwin's analysis of incumbent local exchange carriers' (ILEC) impairment filings in Arkansas (by SBC Communications) and in New Jersey (by Verizon New Jersey). Baldwin Aff. ¶¶ 3,4.

The FCC seeks comments on several issues. The Committee's comments particularly address the following FCC requests:

- "[H]ighlight[] factual information that would be relevant under the guidance of USTA II" and provide the "underlying data, analysis and methodologies necessary to enable the Commission and commenters to evaluate the factual claims meaningfully, including a discussion of the basis upon which data were included or excluded." (*In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of*

Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, released August 20, 2004 (NPRM), ¶ 15.) These comments and the attached Affidavit summarize data specific to local markets in Utah.

- Define relevant product, geographic and customer class markets. (*NPRM*, ¶ 9.)
- Identify transition mechanisms that "would help to prevent service disruptions during cut-overs from unbundled network element (UNE) facilities to a carrier's own (or third-party) facilities, or for conversions to tariffed or other service arrangements." *(NPRM*, ¶ 10.)
- Apply the FCC's unbundling framework "to make determinations on access to individual network elements." (*NPRM*, ¶ 10.)

In these comments and the attached Affidavit, the Committee provides specific recommendations regarding how the FCC should modify its unbundling framework to respond to the concerns raised by *USTA II* and also to eliminate ambiguity that now exists in the network unbundling rules.

The attached Affidavit summarizes how the FCC should apply its network unbundling framework to Utah markets, and more generally how the FCC should apply its framework to local markets. The recommendations included in these comments and the attached Affidavit seek to improve the prospect of local competition for residential and small business mass market customers and to minimize the potential for service disruption when consumers migrate from one telecommunications supplier to a competing supplier.

The Committee welcomes the opportunity to summarize the results of our fact-gathering and to offer our policy recommendations, based on our involvement in the Utah PSC's impairment proceeding and on our experience representing Utah's consumers. (*USTA II*, at 15 and 17)

DATA EXAMINED IN UTAH PSC DOCKET NO. 03-999-04

The proprietary data that the industry submitted in Utah PSC Docket No. 03-999-04 are current as of 2003. The Committee does not have access to more recent, proprietary data, but, given industry trends, the limited consumer options that exist for the mass market are likely to be diminishing because carriers have been withdrawing from the residential market. In these comments and in the attached Affidavit, where we rely on public data, we have updated them, as feasible. Baldwin Aff., ¶ 17.

Incumbent carriers have unique access to geographically disaggregate and carrier-specific market share data as a result of supplying UNE loops (UNE-L), UNE platform (UNE-P) and collocation to their competitors. If, in this proceeding, the incumbent carriers rely on updated granular data in either their initial or reply filings (*e.g.*, data that is of a more recent vintage than the data that carriers submitted in the state *TRO* proceedings), parties should have an opportunity for discovery. Alternatively, the FCC should limit the analysis of proprietary data to those data submitted in states' TRO proceedings so that all parties are relying on comparable data and equally available data. Baldwin Aff., ¶ 18. If the FCC lacks adequate and sufficiently granular data to conduct its impairment analysis, it should initiate comprehensive evidentiary hearings.

RELEVANT MARKETS

The proper definition of the relevant markets is essential for the purpose of assessing whether impairment exists.

The FCC seeks comment on "how best to define relevant markets (*e.g.*, product markets, geographic markets, customer classes) to develop rules that account for market variability and to conduct the service-specific inquiries to which *USTA II* refers." *NPRM*, ¶ 9. The D.C. Circuit found in *USTA II* that "the FCC is obligated to establish unbundling criteria that are at least aimed at tracking relevant market characteristics and capturing significant variation." *USTA II*, at 9. The FCC should define more clearly the relevant product, geographic, and customer class markets. The FCC cannot undertake an analysis of impairment in the mass market until and unless these markets have been properly, and specifically, defined. Baldwin Aff., ¶ 23.

The FCC should establish 24 DSO channels as the cross over between the mass market and the enterprise market.

Until such time as an administratively practical alternative emerges, the FCC should consider all DSO loops (up to 24 channels) to be mass market. Although reliance on the "economic" cross over point for delineating between the mass and consumer markets has theoretical appeal, such a determination depends on many variables (e.g., DSO and DS1 rates, DS1 multiplexing equipment costs, etc.), which, in turn, are subject to change. The FCC has acknowledged that the four line carve-out should be re-examined in the context of the entire unbundling framework being contemplated at this time. Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001), ¶ 56. (*Triennial Review NPRM*) *See also*, *TR*O, ¶ 525. As such, the FCC still needs to make a market-specific determination with respect to the demarcation point between mass market and enterprise customers. The Commission should refrain from adopting the four line carve-out on a permanent basis, and instead, define all DSO loops as mass market. Baldwin Aff., ¶ 32.

The wire center is the appropriate geographic market for assessing whether impairment exists for mass market switching.

In its *Triennial Review NPRM*, the Commission seeks comment on what "geographic delineations would be useful" in applying its unbundling analysis. *Triennial Review NPRM*, ¶ 39. The FCC suggests that "a service- or location-specific analysis will be administratively more difficult, because it will involve more data and more review" and seeks comment on weighing "the benefits of more refined unbundling rules against the administrative burden or conducting the more detailed analysis and applying more complicated rules." *Id.*, ¶ 40. However, the D.C. Circuit found that the Commission is "obligated to establish unbundling criteria that are at least aimed at tracking" such details as opposed to opting for simple rules. *USTA II*, at 9.

As such, the Commission should adopt the wire center as the geographic market for the purpose of the impairment analysis. The overriding criterion in determining the geographic market should be whether customers are *actually* being served. *TRO*, ¶ 495. "The wire center is logical, corresponds with the economics of the supply and the demand for retail and wholesale services, is administratively feasible, and recognizes disparate customer densities." Baldwin Aff., ¶ 39. The ILEC-proposed geographic markets, by contrast, are artificial and do not track market characteristics and variations therein.

As the Baldwin Affidavit demonstrates in detail, much of the data relating to local market structure, and analyzed in the Utah PSC's impairment proceeding, is based on the ILEC's wire centers. Baldwin Aff., ¶ 40. Relevant factors (that is, those factors that influence a CLEC's costs and revenues) correspond to wire centers. Among the variables that affect the potential profitability of a CLEC's entry into local markets are: incumbent retail prices (that is, the price that the dominant carrier sets for local service and against which the new entrant must compete, UNE prices (the wholesale price is a major cost to the CLEC), local calling areas, size and topography, availability of collocation space, and line density. Baldwin Aff., ¶ 40; *See also*, *TRO*, ¶ 495. Ms. Baldwin's analysis in Utah demonstrates that there is "substantial disparity among wire centers within MSAs in terms of switch deployment and UNE loop activity . . . This market behavior would indicate that the CLECs view certain wire centers as being ones that are economic to enter and do make distinctions *on a wire center-basis*." Baldwin Aff., ¶ 48. If the FCC adopts a broader definition of geographic market than the wire center, then the Commission should refrain from making a finding of non-impairment where CLECs do not serve the *entire* market. Baldwin Aff., ¶ 44.

The FCC should separately examine the residential and the small business market: a rational CLEC will not serve the residential market unless such entry will enhance the CLEC's projected profits.

Evidence that a CLEC serves the small business market is not sufficient to show that the CLEC also serves, or is even likely to serve, the residential market. Based on the Committee's analysis of incumbent and competitive LEC data in Utah's local market, the Committee recommends that the Commission separately examine evidence regarding residential and small business customers. As explained in further detail in the Ms. Baldwin's Affidavit, the market characteristics of, and economic model for, supplying telecommunications services to the residential customer differ from those of serving the small business customer. Baldwin Aff., ¶¶ 51-53. A CLEC may deploy a switch that serves small business customers, but the CLEC may not necessarily choose to offer its services to residential customers. Evidence in Utah supports the Committee's concern about residential customers' lack of access to UNE-L-based local telecommunications services. Baldwin Aff., ¶¶ 99, 118-120. The Committee recommends that the Commission should determine whether CLECs are *actually* serving customers, not whether they have the potential to do so. The Commission should now follow its own guidance that it gave to the states in the *Triennial Review Order*: "[I]n circumstances where switch providers (or the resellers that rely on them) are identified as currently serving, or capable of serving, only part of the market, the state commission may choose to consider defining that portion of the market as a separate market for purposes of its analysis." *TRO*, FN 1552.

A REVIEW OF THE GRANULAR DATA PRESENTED IN UTAH'S IMPAIRMENT PROCEEDING INDICATES THAT THE FCC CANNOT MAKE A FINDING OF NON-IMPAIRMENT FOR ANY UTAH MARKETS NO MATTER HOW SUCH MARKETS ARE DEFINED

As Ms. Baldwin's Affidavit demonstrates: "[r]esidential and small business customers' access to competitive choice depends critically on the availability of UNE-P." Baldwin Aff., ¶ 55. The evidence in Utah's impairment proceeding demonstrates that CLEC activity is scattered within Qwest's proposed markets, and indeed absent in many parts of the Qwest-proposed geographic boundaries.

Baldwin Aff., ¶ 57. Competition in one wire center is not an indicator that competitive choices will be available to customers in adjacent wire centers. Qwest failed to present data that supports its contention that the FCC's self-provisioning trigger is met in the three geographic markets for which it seeks such a finding. Baldwin Aff., ¶¶ 108, 120.

Furthermore, the data shows that CLECs are not serving *all* mass-market customers. Baldwin Aff., ¶ 120. The Commission should clarify its rules to clearly indicate that the self-provisioning trigger is not met when at least three CLECs self-provision switches serve *some part, but not necessarily all* of the mass market. To apply the trigger in any other manner would be inconsistent with the goals of the 1996 Act, which is to encourage local competition for *all* consumers.

APPLYING THE FCC'S UNBUNDLING NETWORK TO MAKE DETERMINATIONS ON ACCESS TO INDIVIDUAL NETWORK ELEMENTS

The FCC seeks comments on how to apply its unbundling framework "to make determinations on access to individual network elements." *NPRM*, ¶ 11. The FCC's framework for the determination of access to unbundled network elements is made up of two "triggers" and a "potential deployment" analysis for evaluating whether impairment exists in a given market. *TRO*, ¶ 494. The Commission requires that only one of the three standards be met for a finding of non-impairment. The first trigger is the "self-provisioning trigger," which, to be satisfied, generally requires that three or more competing providers are serving mass-market customers with their own local circuit switches. *TRO*, ¶ 501. The second trigger, "competitive wholesale facilities trigger", requires that two or more CLECs offer wholesale local circuit switching service to customers using DSO capacity loops and their own switches. *TRO*, ¶ 504 The two triggers examine *actual* deployment by CLECs, and have been termed "Track 1"[1] of the impairment analysis by some parties in the Utah proceeding. The FCC's rules also include an "analysis of potential deployment" which permits a finding of non-impairment if there is a determination that self-provisioning of local switching is economic based on particular criteria. *TRO*, ¶ 506. This examination of potential deployment has been referred to as "Track 2."

The Committee supports the use of the Track 1 triggers if and only if the FCC establishes appropriate criteria for their application and defines markets properly.

The use of the self-provisioning and competitive wholesale facilities triggers to determine whether impairment exists is appropriate *if and only if the FCC establishes appropriate criteria for their application and defines markets properly.* The stakes are enormous if the FCC defines markets too broadly. If a finding of non-impairment is essentially a given (through the application of an overly broad definition of markets), customers would, in fact, not have substitutes for ILEC's services in some sub-markets. This would have grave consequences for competition, and thus, ultimately for consumers. As noted above, however,

[1] This is consistent with the FCC's language in the *TRO*. In the *TRO*, the Commission required states to follow a "two-step process." See *TRO*, ¶ 494.

and supported by the attached Affidavit, Qwest failed to demonstrate that the triggers are met in any of the Qwest-proposed markets in Utah. Baldwin Aff., ¶ 118.

The FCC's "potential deployment" analysis is administratively unworkable because it invites widely disparate views of the likelihood of CLECs' entry into a particular market being profitable.

Based on the Committee's review of the carriers' competing business case models, filed in Utah PSC Docket No. 03-999-04, we conclude that the FCC should eliminate the "potential deployment" analysis from its final network unbundling rules. Baldwin Aff., ¶ 128. The FCC's "potential deployment" analysis is administratively unworkable because it invites widely disparate views of the likelihood of CLECs' entry into a particular market being "economic" and requires that the Commission examine the results of the models for each and every market across the nation. Furthermore, and of greater importance to consumers, the "Track 2" analysis fails to shed light on whether mass market consumers *actually* have a choice among suppliers. Baldwin Aff. ¶¶ 129 - 132

The D.C. Circuit has suggested that Commission reliance on business case models and, more generally, an analysis of "economic entry", to determine impairment in markets will likely not survive judicial review. The D.C. Circuit, in *USTA II*, described the Commission's analysis as "vague almost to the point of being empty." *USTA II*, at 24. The D.C. Circuit suggested that "the issue of whether the standard it too open-ended is likely to arise again." *USTA II*, at 25. The Commission should heed its own findings in the *Triennial Review Order*, that the FCC could not base findings regarding impairment on the business case models submitted and that results varied widely based on inputs and assumptions, around which there was little consensus. *TRO*, ¶ 472.

In Utah, Qwest has failed to demonstrate that CLECs are not impaired in Utah markets without access to unbundled local switching based on a potential development analysis. Qwest sought such a finding for two of its proposed markets in Utah, the St. George and Logan MSAs. "Qwest did not provide *any* evidence of 'actual competitive deployment' of local circuit switches in the St. George MSA and provided negligible evidence in the Logan MSA." Baldwin Aff., ¶ 137. There is substantial evidence in the record in the Utah PSC's impairment proceeding demonstrating that operational and technical barriers continue to exist and that "even those carriers that do currently serve mass market customers will likely not be able to do so without access to UNE-P." Baldwin Aff. ¶¶ 142-144, 171.

Finally, Qwest's business case model, purporting to show that CLECs can engage in "economic" entry, is problematic, at best. See Baldwin Aff., ¶¶ 145-170. While it is the Committee's position that the Commission should not rely on business case models in evaluating impairment, if the Commission nevertheless does rely on such models, it should: (1) apply the models to the correct geographic market (*i.e.* the wire center), (2) separately analyze the potential profitability of serving residential and business customers; and (3) assign less value to this analysis than to evidence of actual switch deployment and serving customers.

TRANSITION FROM UNE PLATFORM

In its *Order and Notice of Proposed Rulemaking*, the Commission established a two-phase, twelve-month plan, beginning from the September 13, 2004 publication of the *NPRM* in the Federal Register. The Commission strives to enable an "orderly transition mechanism," by requiring continued availability of the unbundled network elements that were provided under interconnection agreements as of June 15, 2004 for the first six-month period. During the second six-month period, the Commission established a plan that "mitigates" disruption should the FCC reach a finding of non-impairment for any elements. *NPRM*, ¶ 10. The FCC seeks comment on whether there are circumstances "in which particular final rules would necessitate additional transition mechanisms apart from or beyond this second six-month phase," and what "additional transition mechanisms, if any, would help to prevent service disruptions during cut-overs from UNE facilities to a carrier's own (or third-party) facilities." *NPRM*, ¶ 10.

The FCC permits changes in the rates, terms and conditions by which UNEs are provided if they are, or have been superseded by voluntarily negotiated agreements, an intervening Commission order affecting specific UNE obligations, or a state public utility commission ("PUC") order "raising the rates for network elements." *NPRM*, ¶ 29. The Commission should clarify, as requested by CLECs, that state utility commissions may *change* the rates for network elements, rather than simply *raise* rates. (Competitive LECs have petitioned the FCC to clarify that rate decreases are permitted. In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers, CC Docket Nos. 04-313, 01-338, Petition for Emergency Clarification and/or Errata, submitted by the Association for Local Telecommunications Services, et al, August 27, 2004.)

Although it is the Committee's position that the second transitional phase outlined by the Commission will not apply to markets in Utah because the evidence shows that CLECs are still impaired without access to unbundled switching to serve mass market customers, the Committee nonetheless urges the Commission to eliminate this second phase from its rules. The current rules subvert the states' ratemaking authority and fail to protect the interest of consumers. As the attached Affidavit shows, such a plan would be "poor public policy." Baldwin Aff., ¶ 181.

Instead, the FCC should rely upon the transition mechanisms it outlined in the *Triennial Review Order*. A transition plan that seeks to minimize disruption and inspire consumer and investor confidence must encompass more than the rates, terms and conditions with respect to unbundled network elements. A smooth transition from UNE-P to UNE-L requires that hot cuts processes function seamlessly. Carriers must have time to change business plans, provisioning systems, advertising and customer acquisition plans. Baldwin Aff., ¶ 185. The FCC, in its *Triennial Review Order*, adopted a transition period for mass-market loops and mass market switching. Specifically, the FCC adopted a three-year transition period for new line sharing arrangements (*TRO*, ¶ 265) and an implementation plan for moving the embedded base of DS1 enterprise customers and mass-market customers to CLECs' switches. *TRO*, ¶ 532. This transition plan should be maintained. "The FCC's findings in the *TRO* regarding the need for a smooth transition, are entirely consistent with *USTA II* and are essential to protect consumers." Baldwin Aff., ¶ 189. As the attached Affidavit demonstrates, the Commission should ensure, when and if impairment is shown not to exist in a given market, that states manage the transition from UNE-P to UNE-L effectively, particularly with respect to hot cut rates and processes. Baldwin Aff., ¶¶ 190-193.

CONCLUSION

The record in Utah PSC Docket No. 03-999-04 and the attached Affidavit of Susan M. Baldwin demonstrate that mass market customers continue to depend on UNE-P for competitive choice among local telecommunications providers and that CLECs would be impaired without access to unbundled switching to serve residential and small business consumers. For this reason, the FCC's rules governing unbundled network element access and impairment analysis should assure consumers that access to UNEs is based upon proper evaluation of actual service availability in local markets.

It is critically important that the Commission correctly define the markets to which its unbundling framework will be applied. As such, the Committee recommends that the Commission define the geographic market on a wire-center basis and the cut over point between mass and enterprise markets as 24 DSO channels. The Commission should also differentiate between residential and business consumers in its analysis to ensure that all mass-market consumers have competitive choices.

The Committee supports the judicious use of the self-provisioning and competitive wholesale facilities trigger. The Committee recommends, however, that the FCC eliminate its potential deployment analysis from its final rules. If the Commission instead retains the analysis in its rules, it should afford evidence of potential deployment and models of "economic" entry far less weight than evidence of actual entry.

The second six-month phase of the Commission's twelve-month transition plan is contrary to the ratemaking authority of the states. Furthermore, the rate increases contained in the transition period harm mass-market consumers through both price increases and the potential for fewer competitive choices. The Commission should retain the transition plan it outlined in its *Triennial*

Review Order and ensure that the ILECs' hot cut processes are efficient and reasonably priced. Finally, the Commission should allow for a sufficiently thorough discovery process and analysis of granular data to enable an assessment of whether CLECs are impaired, and thus consumers harmed, without access to unbundled mass market switching in the relevant geographic and product markets.

Respectfully submitted,

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